

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

PETER JOHN ENGLER,)	4:07CV3204
)	
Petitioner,)	
)	
v.)	MEMORANDUM
)	AND ORDER
DENNIS BAKEWELL, Warden,)	
)	
Respondent.)	

This matter is before the court on Petitioner's Motion to Dismiss without Prejudice (Filing No. 12) and Respondent's Objection to Motion to Dismiss. (Filing No. 11.) Also pending is Respondent's Motion for Summary Judgment. (Filing No. 8.)

Petitioner filed his Motion to Dismiss without Prejudice on December 3, 2007, presumably in response to Respondent's Motion for Summary Judgment which argued that Petitioner's claims are time-barred. (Filing No. 8.) In his Motion, Petitioner requests that the court dismiss his Petition for Writ of Habeas Corpus without prejudice so that Petitioner can "address this matter in another for[u]m or another court." (Filing No. 12 at CM/ECF p. 1.) Respondent objected to a dismissal without prejudice, arguing that "Petitioner has not presented a proper explanation for his desire to dismiss this case. A dismissal at this juncture is a waste of judicial resources and is prejudicial to the Respondents . . ." (Filing No. 13 at CM/ECF p. 1.)

Petitioner provided a detailed explanation of his "desire to dismiss this case" in his Answer to Respondent's Opposition to Dismissal. (Filing No. 14.) In short, Petitioner seeks a dismissal without prejudice because he would like to pursue state post-conviction remedies and because this action "was filed too soon." (*Id.* at

CM/ECF p. 2.) Indeed, if the court were to dismiss this matter with prejudice, as Respondent requests, such a dismissal may affect Petitioner's pursuit of state post-conviction remedies. In addition, the court does not agree that allowing Petitioner to pursue state post-conviction remedies will prejudice Respondent or waste judicial resources. For good cause shown, the court will grant Petitioner's Motion to Dismiss.

IT IS THEREFORE ORDERED that:

1. Petitioner's Motion to Dismiss without Prejudice (filing no. 12) is granted.
2. Respondent's Objection to Motion to Dismiss (filing no. 11) is denied.
3. Respondent's Motion for Summary Judgment (filing no. 8) is denied.
4. This matter is dismissed without prejudice. A separate judgment will be entered in accordance with this Memorandum and Order.

February 7, 2008.

BY THE COURT:

s/ Joseph F. Bataillon
Chief United States District Judge